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Infinite Energy Home Services, Inc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

INFINITY ENERGY, INC., a
California Corporation,
Plaintiff,

v.

INFINITE ENERGY HOME
SERVICES, INC., a California
Corporation,

Defendant.

Case No.
2:21-cv-00438-WBS-KJN
Hon. William B. Shubb

**[PROPOSED] ORDER GRANTING
DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE,
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Date: May 30, 2023
Time: 1:30 p.m.
Location: Courtroom 5

Defendant INFINITE ENERGY HOME SERVICES, Inc.'s Motion for Summary Judgment, or in the Alternative, Motion for Partial Summary Judgment ("Motion") was heard by this Court on MAY 30, 2023. Upon consideration of the papers filed in support of and in opposition to the Motion, the pertinent records and documents on file in this case, and any oral arguments presented by counsel, and for good cause shown, the Court has determined that there are no genuine issues of material fact and that Defendant INFINITE ENERGY HOME SERVICES, Inc. is entitled to judgment as a matter of law as to



1 each of Plaintiff's claims and demands for relief.

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is
3 entitled to summary judgment on all claims and the Motion shall be
4 granted for the following reasons:

5 To prevail on any one of their claims, Plaintiff bears the
6 burden of establishing a likelihood of confusion. *M2 Software, Inc.*
7 *v. Madacy Entm't*, 421 F.3d 1073, 1080 n.5 (9th Cir. 2005). To
8 establish a likelihood of confusion, Plaintiff must offer
9 sufficient evidence to show that a substantial portion of the
10 consuming public is likely to be confused. *One Indus., LLC v. Jim*
11 *O'Neal Distrib., Inc.*, 578 F.3d 1154, 1163 (9th Cir. 2009). Here,
12 Plaintiff has presented insufficient evidence to allow any
13 reasonable jury to find that a likelihood of confusion exists as a
14 matter of law. Therefore, Defendant is entitled to summary judgment
15 on each of Plaintiff's claims. Judgment is entered in favor of
16 Defendant INFINITE ENERGY HOME SERVICES, Inc and against Plaintiff
17 on all claims asserted in Plaintiff's First Amended Complaint.

18
19 [In the alternative] IT IS HEREBY ORDERED, ADJUDGED AND
20 DECREED that Defendant INFINITE ENERGY HOME SERVICES, Inc. is
21 entitled to summary judgment on all of Plaintiff's claims for
22 monetary relief.

23 Plaintiff seeks recovery of actual damages, disgorgement of
24 profits, attorney's fees and exemplary damages.

25 Plaintiff offered no certain evidence of the damages Plaintiff
26 allegedly suffered. Plaintiff offered no evidence of Defendant's
27 allegedly willful and malicious conduct. Plaintiff's Person Most
28 Qualified also admitted that he did not have any personal knowledge



1 of Defendant's intent. Thus, Plaintiff cannot recover its actual
2 damages (as there is no objective evidence showing that it suffered
3 any damages) or disgorgement profits under the theory that
4 Defendant's profits are a measure of Plaintiff's damages. *See Edge*
5 *Games, LLC v. Houghton Mifflin Harcourt Publishing Co.*, No. EDCV
6 13 02123 VAP (DTBx), 2015 WL 3498607 (C.D. Cal. June 2, 2015).

7 Plaintiff also cannot establish Defendant "willfully"
8 infringed Plaintiff's servicemark, as Plaintiff has put forth no
9 evidence that Defendant chose its tradename in an attempt to exploit
10 any advantage of Plaintiff's servicemark. As a matter of law,
11 Plaintiff is not entitled to damages it seeks to recover, and
12 Defendant's partial motion for summary judgment on all claims for
13 monetary relief is granted.

14 Partial judgment is entered in favor of Defendant INFINITE
15 ENERGY HOME SERVICES, Inc. and against Plaintiff's claims for
16 monetary relief. Plaintiff's remaining reliefs sought in
17 Plaintiff's prayer for relief are claims at equity, and therefore
18 Plaintiff's Demand for Jury Trial is stricken from the First Amended
19 Complaint.

20
21 **IT IS SO ORDERED.**

22
23 DATED: _____

HONORABLE WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

